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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 16

[FAR Case 2020-004; Docket No. FAR-2020-0004, Sequence No.

1]

RIN 9000-AO04

Federal Acquisition Regulation: Application of Micro-purchase Threshold to Task and Delivery Orders

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 that raises the threshold for fair opportunity on certain task and delivery orders to the micro-purchase threshold.

DATES: Interested parties should submit written comments at the address shown below on or before **[Insert date 60 days after date of publication in the *FEDERAL REGISTER*]** to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2020-004 to <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FAR Case 2020-004". Select the link "Comment Now" that corresponds with "FAR Case 2020-004." Follow the instructions provided on the screen. Please include your name, company name (if any), and "FAR Case 2020-004" on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

Instructions: Please submit comments only and cite "FAR Case 2020-004" in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Michael O. Jackson, Procurement Analyst, at 202-208-4949 or by email at michaelo.jackson@gsa.gov. For information pertaining to status or publication schedules, contact the Regulatory

Secretariat Division at 202-501-4755. Please cite "FAR Case 2020-004".

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to implement section 826 of the NDAA for FY 2020 (Pub. L. 116-92) which increases the threshold for requiring fair opportunity on orders under multiple-award contracts from \$2,500 to the "micro-purchase threshold". The fair opportunity to compete at FAR 16.505(b)(1) applies to orders over the threshold unless an exception at FAR 16.505(b)(2) applies. The FAR threshold at 16.505 is currently \$3,500, as a result of inflation adjustments in accordance with FAR 1.109. This change applies the word-based threshold to ensure continued alignment with any future changes to the thresholds.

FAR Case 2018-004 was published July 2, 2020 (85 FR 40064) with an effective date of August 31, 2020. It raised the micro-purchase threshold, as defined at FAR 2.101, to \$10,000.

II. Discussion and Analysis

FAR section 16.505 currently requires contracting officers to provide each awardee a fair opportunity to be considered for each order exceeding \$3,500 under multiple-

award delivery-order or task-order contracts unless an exception applies. This rule proposes to change the threshold for requiring fair opportunity from \$3,500 to the "micro-purchase threshold" at FAR 16.505(b)(1)(i), 16.505(b)(2)(i), and 16.505(b)(2)(ii)(A). While the rule does not prohibit a contracting officer from providing fair opportunity to each awardee at or below the micro-purchase threshold, the rule requires contracting officers to provide fair opportunity for orders exceeding the micro-purchase threshold unless an exception applies.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This proposed rule does not create any new provisions or clauses, nor does it change the applicability of any existing provisions or clauses included in solicitations and contracts valued at or below the SAT, or for commercial items, including COTS items.

IV. Expected Cost Savings

DoD, GSA and NASA have performed a regulatory cost analysis for this proposed rule. This rule is expected to reduce the public burden because the threshold increase will reduce costs to submit an offer for the unsuccessful awardees who participate in fair opportunity competitions

for orders under FAR part 16. DoD, GSA, and NASA recognize some awardees may be impacted by a reduction in the number of opportunities an awardee may have to receive an award of a delivery or task order through fair opportunity. Using Federal Procurement Data System (FPDS) data from FY 2017 through FY 2019 for FAR part 16 task and delivery orders awarded using fair opportunity between \$3,500 and \$10,000, the average number of fair opportunity task or delivery orders under FAR part 16 procedures is approximately 9,800 orders annually. We estimate that the Government receives an average of three offers for each of the 9,800 task or delivery orders, resulting in an estimated 19,600 ($9,800 \times 2$) unsuccessful offers. We assume there are costs to submit the offers for the estimated 19,600 unsuccessful offers, which will be eliminated by this rule. We estimate the public cost savings to be \$266,070 annually using a fully burdened GS-12 step 5 salary from 2019 ($19,600 \text{ offers} \times 0.25 \text{ hour} \times \54.30).

DoD, GSA and NASA recognize that the increase in the micro-purchase threshold (MPT) in FAR Case 2018-004 (84 FR 52420 on October 2, 2019) has resulted in an increased use of the Governmentwide commercial purchase card and a general reduction in the number of FAR part 16 delivery and task orders awarded between \$3,500 and \$10,000. According

to FPDS, there were 12,911 fair opportunity FAR part 16 awards between \$3,500 and \$10,000 in FY 2017. In contrast, there were 6,421 awards in FY 2019; a drop by almost 50%. This decrease can be attributed to the preference given to the Governmentwide commercial purchase card for procurements under the MPT. While it's unclear whether there will be further decreases in the number of FAR part 16 fair opportunity awards, it is clear that the increased MPT implemented by FAR Case 2018-004 has already reduced the public and Government burden by approximately 50% by shifting procurements from FAR part 16 delivery and task orders to Governmentwide commercial purchase cards.

DoD, GSA and NASA expect the rule to also reduce burden on the Government and streamline procurements for FAR part 16 orders below the MPT, or \$10,000. Contracting officers will not be required to review multiple offers to make award. It is estimated that on average an hour would be saved per order awarded since the contracting officer would no longer need to review multiple offers to award the order. We estimate the Government cost savings to be \$532,140 annually using a fully burdened GS-12 step 5 salary from 2019 (9,800 awards x 1 hour x \$54.30).

The following is a summary of the estimated cost savings calculated in 2016 dollars at a 7% discount rate and in perpetuity.

Summary	Public	Government	Total
Present Value Cost Savings	-\$3,801,000	-\$7,602,000	-\$11,403,000
Annualized Cost Savings	-\$266,070	-\$532,140	-\$798,210
Annualized Value Cost Savings as of 2016 if Year 1 is 2020	-202,984	-\$405,967	-\$608,951

DoD, GSA and NASA invite comments from the regulated community on both the methodology and the analysis provided in this rule.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing

rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This proposed rule is expected to be an E.O. 13771 deregulatory action. Information on the estimated cost savings of this rule are discussed in the "Expected Cost Savings" section of the preamble.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. However, an initial regulatory flexibility analysis (IRFA) has been performed and is summarized as follows:

This proposed rule amends the Federal Acquisition Regulation to implement section 826 of the National Defense Authorization Act (NDAA) for 2020 (Pub. L. 116-92) which raises the threshold for fair opportunity on certain task and delivery orders to the word-based, "micro-purchase threshold".

The objective of the rule is to increase the threshold for requiring fair opportunity on FAR part 16 orders under multiple-award contracts from \$2,500 to the word-based, "micro-purchase threshold" for consistency of application and alignment with future adjustments. The legal basis for the rule is section 826 of the NDAA for FY 2020 (Pub. L. 116-92).

This rule will likely affect small business entities that participate in fair opportunity competitions for FAR part 16 task and delivery orders under multiple award contracts conducted by the Federal Government between \$3,500 and \$10,000. The rule is not expected to have a significant economic impact on small business entities because DoD, GSA, and NASA do not expect a significant change in the number of orders awarded to small entities; however, in certain circumstances it is expected to reduce the costs associated with developing and submitting a response to task and delivery order competitions for actions up to \$10,000. To assess the impact of the threshold increase, data was obtained from FPDS. For FY 2017 through FY 2019, there was an average of 9,803 FAR part 16 task and delivery orders awarded using fair opportunity between \$3,500 and \$10,000. Of these actions, an average of 5,852 were awarded to 843 unique small business entities. As a result of this rule, it is assumed that approximately 843 small business entities may experience a reduction in proposal costs on task and delivery orders valued between \$3,500 and \$10,000.

The proposed rule does not impose any Paperwork Reduction Act reporting or recordkeeping requirements on any small entities.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the proposed rule that would meet the proposed objectives.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by this rule consistent with 5 U.S.C.

610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2020-004) in correspondence.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 16

Government procurement.

William F. Clark,
Director,
Office of Government-wide
Acquisition Policy,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA are proposing to amend 48 CFR part 16 as set forth below:

PART 16—TYPES OF CONTRACTS

1. The authority citation for 48 CFR part 16 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

16.505 [Amended]

2. Amend section 16.505 by—

a. Removing from paragraph (b)(1)(i) introductory text “\$3,500” and adding “the micro-purchase threshold” in its place;

b. Removing from paragraph (b)(2)(i) introductory text “delivery-order or task-order exceeding \$3,500” and adding “delivery order or task order exceeding the micro-purchase threshold” in its place ; and

c. Removing from the intro text paragraph (b)(2)(ii)(A) “\$3,500” and adding “*the micro-purchase threshold*” in its place.